

## **APPENDIX B**

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### **Federal Laws, Regulations and Executive Orders**

BLM must comply with the mandate and intent of the following federal laws (and any applicable regulations) and EOs that apply to BLM-administered lands and resources in the Planning Area.

#### **B.1 Air**

##### **Clean Air Act (42 U.S.C. 7401 et seq.)**

The primary objective of the CAA is to establish federal standards for various pollutants from both stationary and mobile sources and to provide for the regulation of polluting emissions via state implementation plans. In addition, the amendments are designed to prevent significant deterioration in certain areas where air quality exceeds national standards and to provide for improved air quality in areas which do not meet federal standards (“non-attainment” areas).

Federal facilities are required to comply with air quality standards to the same extent as non-governmental entities. Part C of the 1977 amendments stipulates requirements to prevent significant deterioration of air quality and, in particular, to preserve air quality in national parks, national wilderness areas, national monuments, and national seashores.

The amendments establish Class I, II, and III areas, where emissions of particulate matter and sulfur dioxide are to be restricted. The restrictions are most severe in Class I areas and are progressively more lenient in Class II and III areas.

Mandatory Class I federal lands include all national wilderness areas exceeding 500 acres. Federal land managers are charged with direct responsibility to protect the air quality and related values (including visibility) of Class I lands and to consider, in consultation with EPA, whether proposed facilities will have an adverse impact on these values.

#### **B.2 American Indians**

##### **A. American Indian Religious Freedom Act (42 U.S.C. 1996)**

This act recognizes that freedom of religion for all people is an inherent right and that traditional American Indian religions are an indispensable and irreplaceable part of Indian life. Establishing federal policy to protect and preserve the inherent right of religions freedom for Native Americans, this act requires federal agencies evaluate their actions and policies to determine, if

changes should be made to protect and preserve the religious cultural rights and practices of Native Americans. Such evaluations are made in consultation with native traditional religious leaders.

## **B. Native American Graves Protection & Repatriation Act (25 U.S.C. 3001-13)**

This act establishes requirements for the treatment of Native American human remains and sacred or cultural objects found on federal land.

In any case where such items can be associated with specific tribes or groups of tribes, the agency is required to provide notice of the item in question to the tribe or tribes. Upon request, each agency is required to return any such item to any lineal descendant or specific tribe with whom such item is associated. There are various additional requirements imposed upon the Secretary.

## **C. Indian Sacred Sites (EO 13007, May 24, 1996)**

In managing federal lands, agencies shall, to the extent practicable, permitted by law, and not inconsistent with agency functions, accommodate Indian religious practitioners' access to and ceremonial use of Indian sacred sites. Agencies are to avoid adversely affecting the physical integrity of these sites, maintaining the confidentiality of such sites, and informing tribes of any proposed actions that could restrict access to, ceremonial use of, or adversely affect the physical integrity of, sacred sites.

## **D. Consultation & Coordination with Indian Tribal Governments (EO 13175, November 6, 2000)**

In formulating or implementing policies that have tribal implications, agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

## **E. Religious Freedom Restoration Act (42 U.S.C. §2000bb)**

This act is aimed at preventing laws which substantially burden a person's free exercise of their religion. The Religious Freedom Restoration Act reinstated the **Sherbert Test**, mandating that **strict scrutiny** be used when determining if the **Free Exercise Clause** of the **First Amendment to the United States Constitution**, guaranteeing religious freedom, has been violated. In this, the courts must first determine whether a person has a claim involving a sincere religious belief, and whether government action has a substantial burden on the person's ability to act on that belief. If these two elements are established, then the government must prove that it is acting in furtherance of a compelling state interest, and that it has pursued that interest in the manner least restrictive, or least burdensome, to religion.

## **B.3 Antiquities/Archaeological**

### **A. Antiquities Act (16 U.S.C. §§431-433)**

This act authorizes the President to designate as National Monuments objects or areas of historic or scientific interest on lands owned or controlled by the United States. The act required that a permit be obtained for examination of ruins, excavation of archaeological sites, and the gathering of objects of antiquity on lands under the jurisdiction of the Secretaries of the Interior, Agriculture, and Army, and provided penalties for violations.

### **B. Historic Sites, Buildings and Antiquities Act (16 U.S.C. 461-462, 464-467)**

This act declared it a national policy to preserve historic sites and objects of national significance. It provided procedures for designation, acquisition, administration, and protection of such sites. Among other things, National Historic and Natural Landmarks are designated under authority of this act.

### **C. Archaeological Resources Protection Act (16 U.S.C. 470aa - 470ll)**

This act largely supplanted the resource protection provisions of the Antiquities Act for archaeological items. It established detailed requirements for issuance of permits for any excavation for or removal of archaeological resources from federal or Indian lands. It also established civil and criminal penalties for the unauthorized excavation, removal, or damage of any such resources; for any trafficking in such resources removed from federal or Indian land in violation of any provision of federal law; and for interstate and foreign commerce in such resources acquired, transported or received in violation of any state or local law.

### **D. Archeological and Historic Preservation Act (16 U.S.C. 469-469c)**

This law was enacted to carry out the policy established by the Historic Sites Act, directed federal agencies to notify the Secretary of the Interior whenever they find a federal or federally assisted, licensed or permitted project may cause loss or destruction of significant scientific, prehistoric, or archaeological data. The act authorized use of appropriated, donated, and/or transferred funds for the recovery, protection, and preservation of such data.

### **E. National Historic Preservation Act (16 U.S.C. 470 et seq.)**

This act provided for preservation of significant historical features (buildings, objects, and sites) through a grant-in-aid program to the states. It established a NRHP and a program of matching grants under the existing National Trust for Historic Preservation. The act established an Advisory Council on Historic Preservation, which was made a permanent independent agency in 1976. Federal agencies are directed to take into account the effects of their actions on items or sites listed or eligible for listing in the NRHP.

## **F. Protection & Enhancement of Cultural Environment (EO 11593, May 13, 1971)**

Federal agencies are to provide leadership in the preservation, restoration, and maintenance of the historic and cultural environment. Agencies are to locate and evaluate all federal sites under their jurisdiction or control which may qualify for listing on the NRHP. For sites that qualify, agencies are to initiate procedures to maintain such federally owned sites. The Advisory Council on Historic Preservation must be allowed to comment on the alteration, demolition, sale, or transfer of property which is likely to meet the criteria for listing as determined in consultation with the SHPO.

## **G. Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations (EO 12898, February 11, 1994)**

Agencies shall make achieving environmental justice part of their mission by identifying and addressing disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations.

## **H. Preserve America (EO 13287, March 3, 2003)**

Agencies shall provide leadership in preserving America's heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the federal government.

Each agency is to provide and maintain an assessment of the status of its inventory of historic properties and their ability to contribute to community economic development initiatives.

Where consistent with its mission and governing authorities, and where appropriate, agencies shall

1. seek partnerships with state and local governments, Indian tribes, and the private sector to promote the unique cultural heritage of communities and of the nation and to realize the economic benefit that these properties can provide; and
2. cooperate with communities to increase opportunities for public benefit from, and access to, federally owned historic properties.

## **B.4 Environment—Generally**

### **A. National Environmental Policy Act (42 U.S.C. 4321 et seq.)**

NEPA encourages productive and enjoyable harmony between man and his environment; promotes efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and enriches the understanding of the ecological systems and natural resources important to the nation

NEPA requires that for recommendations or reports on proposals for legislation and other major actions significantly affecting the quality of the human environment that federal agencies through a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment include a detailed statement by the responsible official on -

1. the environmental impact of the proposed action;
2. any adverse environmental effects which cannot be avoided should the proposal be implemented;
3. alternatives to the Proposed Action;
4. the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
5. any irreversible and irretrievable commitments of resources which would be involved in the Proposed Action should it be implemented.

## **B. Protection & Enhancement of Environmental Quality (EO 11514, Mar 5, 1970)**

Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals of protecting and enhancing the quality of the nation's environment to sustain and enrich human life.

Agencies should monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment.

Agencies shall ensure the fullest practicable provision of timely public information and understanding of federal plans and programs with environmental impact in order to obtain the views of interested parties. This will include, whenever appropriate, provision for public hearings and shall provide the public with relevant information, including information on alternative courses of action.

## **C. Environmental Quality Improvement Act (42 U.S.C. 4371 et seq.)**

Ensures that each federal agency conducting or supporting public works activities affecting the environment implements policies established under existing law principally by establishing the Office of Environmental Quality to provide assistance to, and oversight of, federal agencies.

## **D. Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.)**

The "Organic Act" for the BLM, this act provides for the inventory and planning of the public lands to ensure that these lands are managed in accordance with the intent of Congress under the

principles of multiple use and sustained yield. The lands are to be managed in a manner that protects the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values that, where appropriate, will preserve and protect certain public lands in their natural conditions, provide food and habitat for fish and wildlife and domestic animals, and provide for outdoor recreation and human occupancy and use by encouraging collaboration and public participation throughout the planning process.

In addition, the public lands must be managed in a manner that recognizes the nation's need for domestic sources of minerals, food, timber, and fiber from the public lands.

Many old laws were repealed, but rights obtained under those laws are protected.

New authority for the disposal of appropriate public lands through sale or exchange is provided.

Right-of-way granting procedures are provided for both the BLM and the USFS.

The regulations contained in 43 CFR Part 1600 govern the BLM planning process.

## **B.5 Fire**

### **Timber Protection Act (16 U.S.C. 594)**

This act authorizes the Secretary of the Interior to protect timber on lands under the DOI's jurisdiction from fire, disease, and insects

## **B.6 Fish and Wildlife**

### **A. Animal Damage Control Act (7 U.S.C. 426-426c)**

This act, as amended, gives the Secretary of Agriculture broad authority for investigation, demonstrations, and control of mammalian predators, rodents, and birds.

### **B. Bald Eagle Protection Act (16 U.S.C. 668-668d)**

This law provides for the protection of the bald eagle (the national emblem) and the golden eagle by prohibiting, except under certain specified conditions, the taking, possession, and commerce of such birds, parts, eggs, or nests.

### **C. Endangered Species Act (16 U.S.C. 1532 et seq.)**

This act provides for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend, both through federal action and by encouraging the establishment of state programs. The act:

1. authorizes the determination and listing of species as endangered and threatened;
2. prohibits unauthorized taking, possession, sale, and transport of endangered species;

3. provides authority to acquire land for the conservation of listed species, using land and water conservation funds;
4. authorizes establishment of cooperative agreements and grants-in-aid to states that establish and maintain active and adequate programs for endangered and threatened wildlife and plants;
5. authorizes the assessment of civil and criminal penalties for violating the act or regulations; and
6. authorizes the payment of rewards to anyone furnishing information leading to arrest and conviction for any violation of the act or any regulation issued thereunder.

Section 7 of the Endangered Species Act requires federal agencies to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of listed species or modify their critical habitat.

## **D. Neotropical Migratory Bird Conservation Act (P.L. 106-247)**

This act provides grants to countries in Latin America and the Caribbean, and the United States for the conservation of neotropical migratory birds that winter south of the border and summer in North America. The law encourages habitat protection, education, researching, monitoring, and capacity building to provide for the long-term protection of neotropical migratory birds.

## **E. Conservation of Migratory Birds (EO 13186, January 10, 2001)**

Under the principals of a MOU with the USFWS, each agency shall, to the extent permitted by law, subject to the availability of appropriations, within administration budgetary limits, and in harmony with agency missions, among others:

1. support the conservation intent of the migratory bird conventions by integrating bird conservation principles, measures, and practices into agency activities and by avoiding or minimizing, to the extent practicable, adverse impacts on migratory bird resources when conducting agency actions;
2. restore and enhance the habitat of migratory birds, as practicable;
3. prevent or abate the pollution or detrimental alteration of the environment for the benefit of migratory birds, as practicable;
4. design migratory bird habitat and population conservation principles, measures, and practices into agency plans and planning processes as practicable;
5. within established authorities and in conjunction with the adoption, amendment, or revision of agency management plans and guidance, ensure that agency plans and actions promote programs and recommendations of comprehensive migratory bird planning efforts; and
6. ensure that environmental analyses of actions required by the NEPA or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds.

## **F. Recreational Fisheries (EO 12962, June 7, 1995)**

Agencies shall improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities by such activities as:

1. developing and encouraging partnerships between governments and the private sector to advance aquatic resource conservation and enhance recreational fishing opportunities;
2. identifying recreational fishing opportunities that are limited by water quality and habitat degradation and promoting restoration to support viable, healthy, and, where feasible, self-sustaining recreational fisheries;
3. fostering sound aquatic conservation and restoration endeavors to benefit recreational fisheries;
4. supporting outreach programs designed to stimulate angler participation in the conservation and restoration of aquatic systems, and implementing laws under their purview in a manner that will conserve, restore, and enhance aquatic systems that support recreational fisheries.

## **G. Exotic Organisms (EO 11987, May 24, 1977)**

Agencies, to the extent permitted by law, are to:

1. restrict the introduction of exotic species into the natural ecosystems on lands and waters owned or leased by the United States;
2. encourage states, local governments, and private citizens to prevent the introduction of exotic species into natural ecosystems of the U.S.;
3. restrict the importation and introduction of exotic species into any natural U.S. ecosystems as a result of activities they undertake, fund, or authorize; and
4. restrict the use of federal funds, programs, or authorities to export native species for introduction into ecosystems outside the U.S. where they do not occur naturally.

## **B.7 Land**

### **A. Desert Land Act (43 U.S.C. 321 et seq.)**

Allows entry of up to 320 acres of desert land of which the entryman intends to reclaim the land for agricultural purposes within 3 years. Lands must be determined to be available and classified pursuant to 43 U.S.C. 315f before such an entry can be allowed.

### **B. Sales of Public Lands (43 U.S.C. 1713)**

Allows the sale of public lands found suitable for use other than grazing or the production of forage crops that also

1. is difficult and uneconomic to manage; or
2. the tract was acquired for a purpose for which the tract is no longer necessary, or
3. disposal of the tract will serve important public objectives



### **C. Exchanges of Public Land for Non-federal Land (43 U.S.C. 1716)**

Allows the exchange of Public Land, or interests therein, for non-federal lands where it is determined (the Secretary finds) that the public interest will be well served by making the exchange. Values of the disposed and acquired lands must be equal in value.

### **D. Federal Land Exchange Facilitation Act (43 U.S.C. 1716, August 20, 1988)**

Basically amends the exchange provisions of FLPMA to streamline and facilitate land exchange procedures and to expedite exchanges.

### **E. Federal Land Transaction Facilitation Act (PL 106-248, July 25, 2000)**

Provides a more expeditious process for disposal and acquisition of land to facilitate a more effective configuration of land ownership patterns.

Funds from the sale of specified land is deposited in a special fund available to acquire land and to process additional land sales.

## **B.8 Rights-of-Way**

With the passage of FLPMA in 1976, BLM was left with existing ROWs (Pre-FLPMA Rights-of-Way) and three basic authorities under which Public Lands may be used or dedicated to various types of ROWs.

### **A. Pre-FLPMA ROWs (43 U.S.C. 1701 Savings Provision)**

Various laws provided for ROWs ranging from ditches and canals through communications to railroads. Some are indefinite in term and will remain under the pre-FLPMA authority until abandoned. Others have definite terms and will come under current authorities if amended or renewed.

### **B. Oil and Gas Pipeline ROWs (30 U.S.C. 185)**

The Mineral Leasing Act of 1920, as amended, contains provisions for the issuance of ROWs for the transportation of natural gas and oil or products derived therefrom. The term of the ROW is limited to 30 years but is renewable. Where an application involves land administered by two or more federal agencies, the Secretary of the Interior has delegated the decision making to the BLM. Federal agencies are not eligible under this authority.

### **C. FLPMA ROWs (43 U.S.C. 1761 et seq.)**

Title V of FLPMA gives the BLM authority to authorize most any type of ROW use, other than oil and gas ROWs, on the public lands. The term of the ROW is determined by need and conditions; it may be indefinite but usually is around 30 years. ROWs are renewable.

### **D. Federal Aid Highways (23 U.S.C. 317)**

Where Federal Aid Highways are involved, the Secretary of Transportation may appropriate federal land for such highway projects. Applications or requests are usually filed by the State Department of Transportation through the local office of the FHWA. If BLM does not disapprove such a request within 120 days, the appropriation is automatic. When BLM issues a letter “consenting” to the appropriation, reasonable terms and conditions may be included.

### **E. Energy Supply, Distribution, or Use (EO 13211, May 18, 2001)**

This order requires an impact and alternative analysis for any proposed rule that would have an adverse impact on energy supply, distribution, or use.

### **F. Action to Expedite Energy-Related Projects (EO 13212, May 18, 2001)**

For energy-related projects, agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. The agencies shall take such actions to the extent permitted by law and regulation, and where appropriate.

### **G. Environmental Stewardship and Transportation Infrastructure Project Reviews (EO 13274, September 18, 2002)**

Agencies shall take appropriate actions, to the extent consistent with applicable law and available resources, to promote environmental stewardship in the nation’s transportation system and expedite environmental reviews of high-priority transportation infrastructure projects.

For transportation infrastructure projects, agencies shall, in support of the Department of Transportation, formulate and implement administrative, policy, and procedural mechanisms that enable each agency required by law to conduct environmental reviews with respect to such projects to ensure completion of such reviews in a timely and environmentally responsible manner.

### **H. Energy Policy Act (Pub. L. 109-58)**

This act was signed into law on August 8, 2005. The act contains a multitude of provisions covering energy production, distribution, storage, efficiency, conservation, and research. The act requires efficiency standards for certain large appliances and extends Daylight Saving Time to reduce consumption. It provides funding to improve efficiency in low-income housing and expands the Energy Star program. It also requires the Federal Government to increase the

efficiency of its buildings and vehicles, and provides tax credits for certain energy-efficient purchases or improvements. Other topics of note are renewable energy, expanding of the Strategic Petroleum Reserve, fuel production access in federal lands, the banning of drilling in the Great Lakes, electricity reliability, hydrogen vehicles, vehicle efficiency and alternative fuels, ethanol, and motor fuels.

## **B.9 Mining and Mineral Leasing**

### **A. General Mining Law (30 U.S.C. 21 et seq.)**

This authority sets forth rules and procedures for the exploration, location, and patenting of lode, placer, and mill site mining claims. Claimants must file notice of the original claim with the BLM as well as annual notice of intention to hold, affidavit of assessment work, or similar notice.

### **B. Mining and Mineral Policy Act (30 U.S.C. 21a)**

This act expressed the national policy to foster and encourage private enterprise in

1. the development of economically sound and stable domestic mining, mineral, metal, and mineral reclamation industries,
2. the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs,
3. mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and
4. the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities.

### **C. Stock Raising Homestead Act (43 U.S.C. 291-299)**

Patents issued under this authority reserved minerals to the United States as well as the right to prospect for, mine, and remove said minerals. Certain conditions exist to protect the patentee's improvements.

### **D. Mineral Leasing Act (30 U.S.C. 181 et seq.)**

This act authorizes and governs leasing of public lands for development of deposits of coal, oil, gas and other hydrocarbons, sulphur, phosphate, potassium, and sodium.

### **E. Federal Coal Leasing Amendments Act (30 U.S.C. §201)**

This act made major changes in the way coal leases tracts are established, economic and environmental considerations, sale/leasing procedures, and penalties for violations.

## **F. Surface Mining Control and Reclamation Act (30 U.S.C. 1201 et seq.)**

This act establishes a program for the regulation of surface mining activities and the reclamation of coal-mined lands, under the administration of the Office of Surface Mining, Reclamation and Enforcement, in the DOI.

The law sets forth minimum uniform requirements for all coal surface mining on federal and state lands, including exploration activities and the surface effects of underground mining. Mine operators are required to minimize disturbances and adverse impact on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable. Restoration of land and water resources is ranked as a priority in reclamation planning.

## **G. Geothermal Steam Act (30 U.S.C. 1001 et seq.)**

This act authorizes and governs the lease of geothermal steam and related resources on public lands

## **H. Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.)**

This act authorizes and governs mineral leasing on acquired lands.

## **I. Materials Sales Act (30 U.S.C. 601)**

Authorizes the sale or free use of vegetative materials and mineral material (so-called common varieties) not otherwise authorized by other law.

# **B.10 Pollution—General**

## **A. Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.)**

This act regulates the treatment, transportation, storage, and disposal of solid and hazardous wastes. The Service is required to comply with standards for wastes generated at its facilities. The key provisions include:

Identification and listing of hazardous waste and standards applicable to hazardous waste—requires reporting of hazardous waste, permitting for storage, transport, and disposal, and it includes provisions for oil recycling and federal hazardous waste facilities inventories.

1. Management for solid waste, including landfills.
2. Applicability of federal, state, and local laws to federal agencies.
3. Management, replacement, and monitoring of underground storage tanks.

## **B. Comprehensive Environmental Response Compensation and Liability Act (Superfund) (42 U.S.C. 9601 et seq.)**

The “Superfund” statute was enacted in 1980; major amendments were enacted in 1983 and in 1986. The 1980 statute authorized, through 1985, the collection of taxes on crude oil and petroleum products, certain chemicals, and hazardous wastes. It also established liability to the U.S. Government for damage to natural resources over which the U.S. has sovereign rights and requires the President to designate federal officials to act as trustees for natural resources. Use of Superfund monies to conduct natural resource damage assessments was provided.

The 1983 amendments established a comprehensive system to react to releases of hazardous substances and to determine liability and compensation for those affected. The President is authorized to notify federal and state natural resource trustees of potential damages to natural resources and to coordinate related assessments.

Amendments enacted in 1986 (known as the Superfund Amendment and Reauthorization Act, or SARA), among others, 1) added effects on natural resources as a criterion for determining facilities to be placed on the National Priorities List; 2) mandated the designation of federal officials to act as trustees for natural resources and to assess damages and injury to, as well as destruction of, or loss of, natural resources; 3) stipulated that Superfund monies may only be used for natural resource damage claims if all administrative and judicial remedies to recover costs from liable parties have been exhausted; 4) clarified that federal facilities are subject to the same cleanup requirements and liability standards as non-governmental entities, and 5) eliminated the authorization for use of Superfund monies to conduct damage assessments.

## **C. Federal Environmental Pesticide Control Act (7 U.S.C. §136)**

This act, in simple terms, provided for a program for controlling the sale, distribution, and application of pesticides through an administrative registration process and for classifying pesticides for “general” or “restricted” use. “Restricted” pesticides may only be applied by or under the direct supervision of a certified applicator

## **D. Toxic Substances Control Act (15 U.S.C. 2601 et seq.)**

This act authorized the EPA to obtain data from industry on health and environmental effects of chemical substances and mixtures. If unreasonable risk or injury may occur, EPA may regulate, limit, or prohibit the manufacture, processing, commercial distribution, use, and disposal of such chemicals and mixtures.

## **E. Pollution Prevention Act (42 U.S.C. 13101 et seq.)**

This act encourages manufacturers to avoid the generation of pollution by modifying equipment and processes, redesigning products, substituting raw materials, and making improvements in management techniques, training, and inventory control.

## **F. Federal Compliance with Right to Know Laws and Pollution Prevention Requirements (EO 12856, August 3, 1993)**

Requires agencies to comply with the provisions of the Pollution Prevention Act and to assure all necessary actions are taken to prevent pollution. The Council on Environmental Quality provided guidance on pollution prevention in the Federal Register of January 29, 1993.

## **G. Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)**

Establishes a national policy that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment. It directs the EPA to provide guidelines for the treatment, handling, and storage of such wastes.

## **B.11 Rangelands**

### **A. Taylor Grazing Act (43 U.S.C. 215 et seq.)**

The TGA was the Federal Government's first effort to regulate grazing on federal lands. Under the act grazing districts were established of vacant, unreserved, public domain lands which were chiefly valuable for grazing and raising forage crops. Grazing is regulated through leases or licenses for which a fee is paid. Grazing Administration Regulations (43 CFR 4100) provide for the development of state Standards for Rangeland Health and Guideline for Grazing Management. Such standards and guidelines are approved through the BLM's planning and NEPA processes.

The TGA also eliminated settlement on the public domain and provided for the classification and disposal of public lands more valuable for uses other than grazing or the production of forage crops.

### **B. Public Rangelands Improvement Act (43 U.S.C. 1901 et seq.)**

This act was instituted to improve public rangeland conditions in the 16 contiguous western states on which there is, or which are capable of, domestic livestock grazing. Rangeland quality is determined by soil quality, forage values, wildlife habitat, watershed and plant communities, the current state of vegetation in a site in relation to its potential, and the relative degree to which the kinds, proportions, and amounts of vegetation in a plant community resemble the desired plant community.

### **C. Noxious Plant Control Act (43 U.S.C. §§1241-43)**

Authorizes agencies to allow and pay for state authorities to enter federal land for the control/destruction of noxious plants.

### **D. Federal Noxious Weed Act (7 U.S.C. 2801 et seq.)**

This act provides the Secretary of Agriculture authority to designate plants as noxious weeds by regulation and prohibits the movement of all such weeds in interstate or foreign commerce except

under permit. The Secretary of Agriculture also has authority to inspect, seize, and destroy products and to quarantine areas, if necessary, to prevent the spread of such weeds. The Secretary of Agriculture is also authorized to cooperate with other federal, state, and local agencies, farmers associations, and private individuals in measures to control, eradicate, or prevent or retard the spread of such weeds.

Each federal land-managing agency is to designate an office or person adequately trained in managing undesirable plant species to develop and coordinate a program to control such plants on the agency's land.

## **E. Invasive Species (EO 13112, February 3, 1999)**

The purpose is to prevent the introduction of invasive species and provide for their control, as well as to minimize the economic, ecological, and human health impacts that invasive species cause.

Agencies whose actions may affect the status of invasive species shall: (1) identify such actions; (2) use relevant programs and authorities to prevent, control, monitor, and research such species; and (3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere

## **F. Wild Horses and Burros Act (16 U.S.C. 1331-1340)**

This act provides for protection of wild, free-roaming horses and burros. It directs the BLM of the DOI and USFS of the Department of Agriculture to manage such animals on public lands under their jurisdiction.

# **B.12 Recreation**

## **Recreation and Public Purposes Act (43 U.S.C. 869 et seq.)**

This act provides for the lease or disposal of public lands and certain withdrawn or reserved lands to state and local governments, and qualified non-profit organizations to be used for recreational or public purposes. Prices charged for the use or acquisition are normally less than market value of the specific lands. Conditions are imposed in patents, and title may revert to the United States for cause.

# **B.13 Rivers and Streams**

## **A. Wild & Scenic Rivers Act (16 U.S.C. 1271 et seq.)**

This act establishes a National Wild and Scenic Rivers System and prescribes the methods and standards through which additional rivers may be identified and added to the system.

## **B. American Heritage Rivers (EO 13061, September 11, 1997)**

This EO has three objectives: natural resource and environmental protection, economic revitalization, and historic and cultural preservation. Agencies, to the extent permitted by law and consistent with their missions and resources, shall coordinate federal plans, functions, programs, and resources to preserve, protect, and restore rivers and their associated resources important to our history, culture, and natural heritage.

## **B.14 Trails**

### **National Trails System Act (16 U.S.C. 1241-1249)**

This act provides for establishment of National Recreation, National Scenic, and National Historic Trails.

National Recreation Trails may be established by the Secretary of the Interior or Agriculture on land wholly or partly within their jurisdiction with the consent of the involved state(s) and other land managing agencies, if any. National Scenic and National Historic Trails may only be designated by an Act of Congress.

## **B.15 Water—General**

### **A. Water Resources Planning Act (42 U.S.C. 1962a - 1962(a)(4)(e))**

This act established a Water Resources Council to be composed of Cabinet representatives, including the Secretary of the Interior. It also established River Basin Commissions and stipulated their duties and authorities.

The council was empowered to maintain a continuing assessment of the adequacy of water supplies in each region of the U.S. In addition, the council was mandated to establish principles and standards for federal participants in the preparation of river basin plans and in evaluating federal water projects. Upon receipt of a river basin plan, the council was required to review the plan with respect to agricultural, urban, energy, industrial, recreational, and fish and wildlife needs.

### **B. Water Rights (43 U.S.C. 666)**

This act waives the sovereign immunity of the United States where there is a suit designed to establish the rights to a river or other source of water, or the administration of such rights, and the United States appears to own or be in the process of acquiring rights to any such water. (The effect is to permit state courts to adjudicate federal water rights claims under state law.)



## **C. Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.)**

The original 1948 statute, the Water Pollution Control Act, authorized the Surgeon General of the Public Health Service in cooperation with other federal, state, and local entities to prepare comprehensive programs for eliminating or reducing the pollution of interstate waters and tributaries and improving the sanitary condition of surface and underground waters. During the development of such plans, due regard was to be given to improvements necessary to conserve waters for public water supplies, propagation of fish and aquatic life, recreational purposes, and agricultural and industrial uses. The original statute also authorized the Federal Works Administrator to assist states, municipalities, and interstate agencies in constructing treatment plants to prevent discharges of inadequately treated sewage and other wastes into interstate waters or tributaries.

Since 1948, the original statute has been amended extensively either to authorize additional water quality programs, standards, and procedures to govern allowable discharges, funding for construction grants, or general program funding. Amendments in other years provided for continued authority to conduct program activities or administrative changes to related activities.

## **D. Clean Water Act (PL 95-217)**

The CWA extensively amended the Federal Water Pollution Act. Of particular significance were the following provisions:

1. Development of a BMP Program as part of the state areawide planning program
2. Authority for the USACE to issue general permits on a state, regional, or national basis for any category of activities which are similar in nature will cause only minimal environmental effects when performed separately and will have only minimal cumulative adverse impact on the environment
3. Exemption of various activities from the dredge and fill prohibition including normal farming, silviculture, and ranching activities (33 U.S.C. 1344(f))
4. Procedures for state assumption of the regulatory program.

The CWA requires the EPA to establish water quality standards for specified contaminants in surface waters and forbids the discharge of pollutants from a point source into navigable waters without a National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits are issued by EPA or the appropriate state, if it has assumed responsibility. Section 404 of the CWA establishes a federal program to regulate the discharge of dredged and fill material into waters of the United States. Section 404 permits are issued by the USACE.

## **E. Safe Drinking Water Act (42 U.S.C. §300h)**

This act establishes a program to monitor and increase the safety of all commercially and publically supplied drinking water. Amended in 1986 to require the EPA to establish Maximum Contaminant Levels (MCLs), Maximum Contaminant Level Goals (MCLGs), and Best Available Control Technology (BACT) treatment techniques for organic, inorganic, radioactive, and microbial contaminants, and turbidity. Current federal MCLs, MCLGs, and BACTs in public drinking water supplies were set in 1996.

## **F. Water Quality Act (PL 100-4)**

This act provided the most recent series of amendments to the Federal Water Pollution Act. Provisions included:

1. Requirement that states develop strategies for toxics cleanup in waters where the application of BACT discharge standards is not sufficient to meet state water quality standards and support public health;
2. Increase in the penalties for violations of Section 404 permits; and
3. Requirement that EPA study and monitor the water quality effects attributable to the impoundment of water by dams.

## **G. Flood Control Act (16 U.S.C. 460d and other)**

This act, as amended and supplemented by other flood control acts and river and harbor acts, authorizes various USACE water development projects. This statute expressed congressional intent to limit the authorization and construction of navigation, flood control, and other water projects to those having significant benefits for navigation and which could be operated consistently with other river uses. The authority to construct, operate, and maintain public park and recreational facilities in reservoir areas was also provided.

## **H. Oil Pollution Act (33 U.S.C. 2701 et seq.)**

This act established new requirements and extensively amended the Federal Water Pollution Control Act to provide enhanced capabilities for oil spill response and natural resource damage assessment

Among other provisions are that federal trustees shall assess natural resource damages for natural resources under their trusteeship. Federal trustees may, upon request from an Indian tribe or state, assess damages to natural resources for them as well. Trustees shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of natural resources under their trusteeship.

## **I. Floodplain Management (EO 11988, May 24, 1977)**

The purpose of this EO is to prevent agencies from contributing to the “adverse impacts associated with the occupancy and modification of floodplains” and the “direct or indirect support of floodplain development.”

In the course of fulfilling their respective authorities, agencies “shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains.”

Before proposing, conducting, supporting or allowing an action in a floodplain, each agency is to determine if planned activities will affect the floodplain and evaluate the potential effects of the intended actions on its functions. Agencies shall avoid siting development in a floodplain “to avoid adverse effects and incompatible development in the floodplains.”

## **J. Protection of Wetlands (EO 11990, May 24, 1977)**

Similar to Floodplain Management, agencies are directed to consider alternatives to avoid adverse effects and incompatible developments in areas of wetlands. New construction is to be avoided if possible.

## **K. Colorado River Storage Project Act (43 U.S.C. 6200)**

This act authorized the Secretary of the Interior to construct a variety of dams, power plants, reservoirs, and related works. The act also authorized and directed the Secretary of the Interior, in connection with the development of the Colorado River Storage Project and participating projects, to investigate, plan, construct, and operate facilities to mitigate losses of and improve conditions for fish and wildlife and public recreational facilities. The act provided authority to acquire lands and to lease or convey lands and facilities to state and other agencies.

## **L. Colorado River Basin Project Act (43 U.S.C. 1501-1556)**

This act provided a program for the comprehensive development of the water resources of the Colorado River Basin, and directed the Secretary of the Interior to develop, after consultation with affected states and appropriate federal agencies, a regional water plan to serve as the framework under which projects in the Colorado River Basin may be coordinated and constructed.

## **M. Colorado River Floodway Protection Act (100 Stat. 1129)**

This act established a Colorado River Floodway Area, within which are prohibited 1) all new federal funding or financial assistance for any purpose (except for listed exceptions), 2) federal flood insurance for new construction or substantial improvements begun six months after enactment on existing structures, and 3) the granting of new federal leases (unless the Secretary of the Interior determines that the purpose is consistent with the act).

## **N. Colorado River Basin Salinity Control Act (43 U.S.C. §§1571-1599)**

This act authorized the construction of facilities necessary to meet the terms of the 1973 Salinity Agreement with Mexico.

## **O. The Supreme Court of the United States of America, Consolidated Decree, Arizona v. California 547 U.S. 150 (2006)**

This decree consolidates historical rulings, clarifies water rights within the Colorado River Basin, and affirms laws enacted by Congress such as the Colorado River Compact, 1922 and the Boulder Canyon Project Act (1928).

## **B.16 Wilderness**

### **A. Wilderness Act (16 U.S.C. 1131 et seq.)**

This act established a National Wilderness System of areas to be designated by Congress. It directed the Secretary of the Interior, within 10 years, to review every roadless area of 5,000 or more acres and every roadless island (regardless of size) within National Wildlife Refuge and National Park Systems and to recommend to the President the suitability of each such area or island for inclusion in the National Wilderness Preservation System, with final decisions made by Congress. The Secretary of Agriculture was directed to study and recommend suitable areas in the National Forest System.

The act provides criteria for determining suitability and establishes restrictions on activities that can be undertaken on a designated area. Criteria set by Congress within this act states that wilderness areas have the following characteristics: (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and confined types of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value. The Wilderness Act also set the accepted uses of designated WAs and what uses are prohibited. The act sets special provisions for an agency's continuing management of existing or grandfathered rights such as mining and grazing and other agency mission related activities.

### **B. The California Desert Protection Act (P.L. 103-433)**

This act designated lands in the California Desert as wilderness, established Death Valley and Joshua Tree National Parks, and established the Mojave National Preserve. Each WA designated would be administered by BLM in accordance with the provisions of the Wilderness Act, except that any reference to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this title.

## **B.17 Other**

### **A. Base Closure and Realignment Act (Title II of P.L. 100-526)**

The act establishes a preference for the sale of land made surplus as a result of base closures or reductions, with the funds to be utilized for the costs of the closures, or for transfer of the land to a local redevelopment authority. It does not require such sales, however, nor does it repeal the provisions of law permitting the no- or reduced-cost transfer of such land to federal agencies or the states for conservation purposes.

## **B. Cave Resources Protection Act (16 U.S.C. 4301 et seq.)**

This act established requirements for the management and protection of caves and their resources on federal lands, including allowing the land managing agencies to withhold the location of caves from the public and requiring permits for any removal or collecting activities in caves on federal lands.

## **C. Federal Power Act (16 U.S.C. §§791-828c)**

Established what is now the Federal Energy Regulatory Commission (FERC) studies water-related power development possibilities. Licenses and oversees the development of water power project on federal and non-federal lands. On federal land coordinates with agencies and for some agencies they may dictate conditions to be included in licenses.

The FERC also regulates interstate electric transmission lines and interstate oil and gas pipelines, and issues ‘certificates of public convenience’ for these interstate facilities.

## **D. Land and Water Conservation Fund (16 U.S.C. 460I - 460I-11)**

The fund is derived from various types of revenue (primarily Outer Continental Shelf oil monies) and appropriations from the fund may be used for 1) matching grants to states for outdoor recreation projects and 2) land acquisition for various federal agencies.

## **E. Federalism (EO 13132, August 4, 1999)**

In formulating and implementing policies that have federalism implications, agencies shall be guided by the following principles:

1. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.
2. The people of the states created the national government and delegated to it enumerated governmental powers. All other sovereign powers, save those expressly prohibited the states by the Constitution, are reserved to the states or to the people.
3. The framers of the Constitution recognized that the states possess unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories of democracy.
4. The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several states according to their own conditions, needs, and desires. One-size-fits-all approaches to public policy problems can inhibit the creation of effective solutions to those problems.
5. Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort.
6. The national government should be deferential to the states when taking action that affects the policymaking discretion of the states and should act only with the greatest caution

where state or local governments have identified uncertainties regarding the constitutional or statutory authority of the national government.

## **F. Takings (EO 12630, March 15, 1988)**

The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

Agencies shall evaluate carefully the effect of their actions on constitutionally protected property rights to prevent unnecessary takings and should account in decision making for those takings that are necessitated by statutory mandate.

## **G. Regulatory Impact Analysis (EO 12866, September 30, 1993)**

Requires agencies to analyze the economic impact of proposed rules.

## **H. Off-Road Vehicles EO 11644, February 8, 1972 (EO 11989, May 24, 1977)**

These orders require public land managers “to establish policies and procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.”

## **APPENDIX C**

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### **Results of Scoping**

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United States Department of the Interior  
Bureau of Land Management  
Palm Springs-South Coast Field Office

**NextEra Ford Dry Lake Solar Power Plant**  
**BLM Land Use Application**  
**File # CACA-48880**

**SCOPING REPORT**

**RESULTS OF SCOPING**

**January 2010**

Palm Springs-South Coast Field Office  
1201 Bird Center Drive  
Palm Springs, CA 92262

Approved by: \_\_\_\_\_  
John R. Kalish  
Field Manager

\_\_\_\_\_  
Date

# **NextEra Ford Dry Lake Solar Power Plant**

## **I. Introduction**

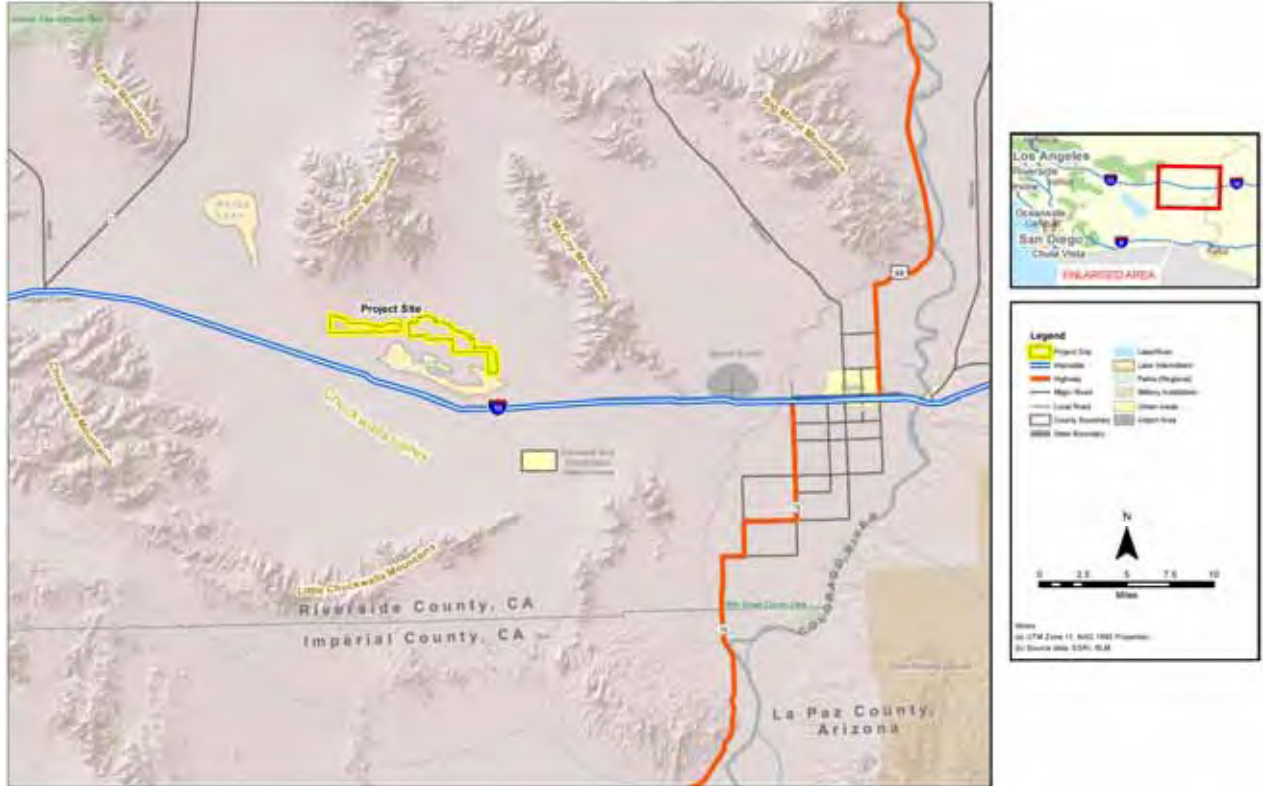
### **A. Brief Description of the Project**

Genesis Solar, LLC, a Delaware limited liability company and wholly owned subsidiary of NextEra Energy Resources, LLC (Applicants), proposes to construct, own, and operate the NextEra Ford Dry Lake Solar Power Plant (Project). The Project would be located approximately 25 miles west of the City of Blythe and 27 miles east of the unincorporated community of Desert Center in Riverside County, California, on lands administered by the Bureau of Land Management (BLM). Surrounding features include the McCoy Mountains to the east, the Palen Mountains (including the Palen/McCoy Wilderness Area) to the north, and Ford Dry Lake, a dry lakebed, to the south (see Figure 1 below). The Applicants have filed with BLM for a right-of-way (ROW) grant to construct, own and operate the Project.

The Project consists of two independent solar electric generating facilities with a net electrical output of 125 megawatts (MW) each, for a total net electrical output of 250 MW using parabolic trough technology similar to existing solar facilities in the Kramer Junction and Harper Lake areas that have been operating for more than 20 years. If approved, the Project would occupy, until decommissioning, approximately 1,800 acres, plus approximately 90 acres of linear facilities. [Note: "Linear Facilities" consist of access roads, gas pipeline, transmission line, etc.]

Parabolic trough solar thermal technology is widely considered a cost-effective and commercially proven technology for utility-scale solar electric power generating facilities. With this technology, arrays of parabolic mirrors collect radiant energy from the sun and refocus the energy on a receiver tube located at the focal point of the parabola. Through this process, a heat transfer fluid (HTF) is heated to high temperature (approx. 750°F) and piped through heat exchangers where it is used to generate high-pressure steam. The steam is then fed to a traditional steam turbine generator to generate electricity.

The Project proposes to use a wet cooling tower for power plant cooling. Water for the cooling tower makeup, process water makeup, and other industrial uses such as mirror washing would be supplied from onsite groundwater wells. Project cooling water blowdown would be piped to lined, onsite evaporation ponds. A generation-tie transmission line, access road, and natural gas pipeline would be co-located in one linear corridor to serve the main Project facility. This corridor would exit the facility to the south and would be approximately 6.5 miles long. The generation tie-line would cross Interstate 10 (I-10), and tie into the Blythe Energy Project Transmission Line. The generation tie-line would use the existing pole structures of the Blythe Energy Transmission Line to interconnect with the proposed Colorado River Substation to the east.



**Figure 1: Project Location**

## B. Potential Land Use Plan Amendment to the California Desert Conservation Area Plan

The Project would be located on land that is subject to the BLM's California Desert Conservation Area (CDCA) Plan, and the Northern and Eastern Colorado Desert (NECO) plan. All of the public lands in the CDCA administered by BLM, except for a few small and scattered parcels, have been designated geographically as a Multiple Use Class (MUC) as follows: Controlled Use (C), Limited Use (L), Moderate Use (M), and Intensive Use (I). The Project would be located in MUC designated M lands. For M lands, wind and solar electric generation facilities may be allowed after National Environmental Policy Act (NEPA) requirements are met. The CDCA also states that sites associated with power generation or transmission not identified in the CDCA will be considered through the Plan Amendment process. The Project site is currently not identified as such in the CDCA. Therefore prior to ROW grant issuance, the Project would require a Land Use Plan Amendment (PA) to the CDCA.

## C. Purpose and Need for the Project

The Proponent proposes to assist the State of California in meeting the State of California Renewable Portfolio Standard Program goals and reduce greenhouse gases

by developing a 250 MW solar thermal energy production plant and related facilities in Riverside County, California on BLM administered lands.

BLM's purpose and need for the Solar project is to respond to the Proponent's application under Title V of the Federal Land Policy and Management Act of 1976 (43 USC 1761) for a right-of-way grant to construct, operate and decommission a solar thermal facility on BLM-administered lands. BLM will consider alternatives to the Applicants' proposed action and will include terms and conditions. If BLM decides to approve issuance of a right of way grant to the Applicant, BLM's actions would include amending the California Desert Conservation Area Plan concurrently. BLM will take into consideration the provisions of the Energy Policy Act of 2005 in responding to the Applicants' application.

## D. Agency Coordination

### D.1 Lead Agency

Under current State Regulation, The California Energy Commission (CEC) is responsible for licensing solar thermal projects that are 50 MW and larger. Therefore, the Project is also under the jurisdiction of the CEC. The Applicants submitted an Application for Certification (AFC) for the Project to the CEC on August 24, 2009. The CEC and the BLM entered into a MOU on August 8, 2007 and as co-lead agencies under CEQA and NEPA agreed that a single environmental document can meet both agencies environmental requirements. It is assumed that any future EIS data and analysis will be incorporated into the CEC's AFC documentation and processes.

### D.2 Cooperating Agency

The cooperating agency (CA) role derives from the National Environmental Policy Act (NEPA) of 1969, which calls on federal, state, and local governments to cooperate with the goal of achieving "productive harmony" between humans and their environment. The Council on Environmental Quality's (CEQ) regulations implementing the procedural provisions of the NEPA allow lead federal agencies to invite tribal, state, and local governments, as well as other federal agencies, to serve as CAs in the preparation of environmental impact statements. In 2005, the BLM amended its Land Use Planning Handbook (H-1601-1) to ensure that it engages its governmental partners consistently and effectively through the CA relationship whenever land use plans are prepared or revised.

State agencies, local governments, tribal governments, and other federal agencies may serve as CAs. CEQ regulations recognize two criteria for CA status: jurisdiction by law and special expertise.

40 CFR 1508.5 (CEQ) Defining eligibility. "Cooperating agency" means any Federal agency other than a lead agency which has "jurisdiction by law" or "special expertise" with respect to any environmental impact....A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

The BLM has invited approximately 29 tribes and multiple state and local agencies to participate in the planning process as Cooperating Agencies. To date, no agencies have agreed to be Cooperating Agencies.

## II. Scoping Process Summary

### A. Notice of Intent

The BLM published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) level Land Use Plan Amendment on November 23, 2009 in the Federal Register. Publication of the NOI began a 30-day formal scoping comment period which ended on December 23, 2009. BLM provided a website with Project information that also described the various methods of providing public comment on the Project including an e-mail address where comments could be sent electronically.

### B. Public Notification

Notification for a public Scoping Meeting held on December 11, 2009 appeared in the Desert Sun local newspaper on November 24, 2009. Notification was also published on the BLM website on November 23, 2009.

### C. Public Scoping Meeting

A public Scoping Meeting was held on December 11, 2009 at the University of Riverside Palm Desert Graduate Center located at 75-080 Frank Sinatra Drive in Palm Desert, California. A presentation describing the Project was made by NextEra, LLC with presentations describing the environmental review process presented by members of the BLM and CEC. Eighty-four attendees were documented by signing in on a voluntary sign-in sheet.

### D. Written Comments

Twenty-four comment letters were received within the comment period ending on December 23, 2009.

## III. Comment Summary and Analysis

Issues were identified by reviewing the comment documents received. Many of the comments identified similar issues; all of the public comment documents were reviewed and the following section provides a summary of the issues, concerns, and/or questions raised. For this report, the issues have been grouped into one of the three following categories:

1. Issues or concerns that could be addressed by effects analysis;

2. Issues or concerns that could develop an alternative and/or a better description or qualification of the alternatives;
3. Issues or concerns outside the scope of the EIS.

The comments discussed below are paraphrased from the original comment letters. To a minor degree, some level of interpretation was needed to identify the specific concern to be addressed. Many of the comments identified similar issues; to avoid duplication and redundancy similar comments were grouped together and then summarized. Original comment letters may be reviewed up on request at the BLM Palm Springs-South Coast Field Office at 1201 Bird Center Drive, Palm Springs, California, 92262, during normal business hours, from 8:00 am to 4:30 pm.

## **A. Effects Analysis**

Comments in this category will be addressed in detail in the affected environment section of the EIS and/or in the impact analysis section for each alternative.

### **Purpose and Need**

1. The purpose and need statements should not be narrowly defined to rule out feasible alternatives
2. The project should be discussed in the context of the larger energy market; identify potential purchasers of the power produced; discuss how the Project will assist in meeting its renewable energy portfolio standards and goals
3. The purpose and need statements must address the true nature of the Project without simply adopting the applicant's purpose

### **Project Description**

1. What utility company is partnering with this project?
2. What will the natural gas line be used for?

### **Air Resources (Air sheds)**

1. Greenhouse gas emissions/climate change impacts on plants, wildlife, and habitat
2. Planning for species adaptation due to climate change
3. Discussion of how projected impacts could be exacerbated by climate change
4. Quantify and disclose anticipated climate change benefits of solar energy
5. Discussion of trenching/grading/filling and effects on carbon sequestration of the natural desert
6. Discussion of ambient air conditions, NAAQS, and criteria pollutant nonattainment areas in all areas considered for solar development
7. Estimation of emissions of criteria pollutants
8. Description and estimation of emissions from potential construction activities

9. Specify the emission sources by pollutant from mobile sources, stationary sources, and ground disturbance
10. Discuss the need for an Equipment Emissions Mitigation Plan
11. Discuss the need for Fugitive Dust Control Plan

### **Soils Resources**

1. Impacts to desert soils
2. Increased siltation during flooding and dust
3. Impacts to crypto-biotic crust
4. Preparation of a drainage, erosion, and sediment control plan

### **Water Resources (Surface and Ground water)**

1. Discuss the amount of water needed for the proposed Project, where this water will be obtained, and the mount and source of power that would be needed to move the water to the facility
2. Identify impacts to jurisdictional waters of the US and California
3. Effects of additional groundwater pumping in conjunction with other groundwater issues
4. Impacts to groundwater, surface water, and wetlands
5. Effects of diversion of water from ephemeral streams
6. Water supply impacts related to dust control, fire prevention and containment, vegetation management, sanitation, equipment maintenance, construction, and human consumption
7. Description of water conservation measures to reduce water demands
8. Effects of climate change on water supply
9. Discussion of potential effects of Project discharges on surface and groundwater quality
10. Disposal of wastewater or other fluids
11. Determination if Project requires a Section 404 permit under the Clean Water Act (CWA)
12. Description of natural drainage patterns, Project operations, identify whether any component of Project is within 50 or 100-year floodplain
13. Provide information on CWA Section 303(d) impaired waters, if any, and efforts to develop and revise total maximum daily loads
14. Describe of the water right permitting process and the status of water rights within the basin, including an analysis of whether water rights have been over-allocated
15. Describe any water right permits that contain special conditions; measures to mitigate direct, indirect, and cumulative impacts; and provisions for monitoring and adaptive management.
16. Discuss whether it would be feasible to use other sources of water
17. Discuss whether it is possible to recycle the water that would be sent to the evaporation ponds

18. Identify the storm design containment capacity of the evaporation ponds, explain how overflow in larger storm events will be managed, and discuss potential environmental impacts (drainage channels affected, water quality, biological resources) in the event of overflow
19. Discuss whether the evaporation pond lining will adequately prevent leakage into the ground water
20. Discuss how water will be purified on-site
21. Discuss how dissolved solids will be handled
22. Discuss how the Project will recharge ground water
23. Discuss lack of rainfall in the Project area
24. Discuss how soil erosion on low fill slopes and steeply graded areas could result in sedimentation of water bodies
25. Discuss impacts affecting surface springs
26. Analyze potential connectivity between deep, medium and shallow groundwater aquifers
27. Discuss potential adverse affects on residential wells
28. Analyze potential adverse impacts affecting the watershed of the Palen and McCoy Mountains

## **Biological Resources**

1. If there are threatened or endangered species present, recommend BLM consult with USFWS and prepare a Biological Opinion under Section 7 of the ESA
2. Consider adopting a formal adaptive management plan
3. Impacts to all known species, not just special status, should be analyzed to assure ecosystem level protection
4. Maximize options to protect habitat and minimize habitat loss and fragmentation
5. Impacts due to increased shade in the desert environment
6. Seasonal surveys should be performed for sensitive plant and animal species
7. Analyze the effects of ponded water or bioremediation areas on wildlife, particularly migratory waterfowl
8. Acquisition of lands for conservation should be part of mitigation strategy
9. Impacts regarding habitat fragmentation and loss of connectivity
10. Discuss the biological value of brackish groundwater and the Project's associated impacts
11. Analyze potential harm to the Ford Dry Lake ecosystem (vernal pools that provide rare and endemic plants and fairy shrimp populations)
12. Include surveys to account for unidentified plant species that have not yet been discovered
13. Analyze impacts affecting the Palen-McCoy wilderness area and the Multiple Species Wildlife Habitat Management Plan
14. Consider that the linear footprint of the Project poses a greater threat to wildlife movement (wildlife corridors) than would a more compact polygon
15. Consider scientific studies pertaining to wildlife corridors and habitat linkages in the California deserts



16. Identify and quantify critical habitat that might be directly, indirectly, or cumulatively affected by each alternative
17. Analysis of impact and mitigation on covered species should include:
  - a. Baseline conditions of habitats and populations of the covered species
  - b. A clear description of how avoidance, mitigation and conservation measures will protect and encourage the recovery of the covered species and their habitats in the Project area
  - c. Monitoring, reporting and adaptive management efforts to ensure species and habitat conservation effectiveness
18. Identify potential impacts of construction, installation, operation, and maintenance activities on habitat and threatened and endangered species
19. Describe the condition of the land selected for the proposed Project and disclose whether the land is classified as disturbed or impaired
20. Discuss the impact associated with construction fences around the Project site, and consider whether there are options that could facilitate better protection of covered species
21. Discuss the effects the evaporation ponds will have on birds and wildlife
22. Consider conducting biological surveys for wet years
23. Discuss impacts affecting wilderness areas
24. Provide detailed vegetation and wildlife maps to facilitate public input
25. Discuss impacts affecting the Eastern Colorado and Northern Colorado Recovery Units
26. Analyze the Project's potential to foreclose future conservation options
27. Address impacts to all known species in the Desert Renewable Conservation Plan, so as to assure ecosystem level protection
28. Confidentiality agreements should not be allowed for the surveys in support of the proposed Project
29. Discuss effects of erosion on dune habitats

**Vegetation Resources (Vegetative communities, priority and special status species)**

1. Identify all petitioned and listed threatened and endangered species and critical habitat that might occur within the Project area
2. Include a full floral inventory of all species encountered on-site
3. Seasonal surveys should be performed for sensitive plant species—lack of fall surveys may under represent onsite plants
4. If transplantation is to be a part of the mitigation strategy, a detailed plan must be included as part of the EIS/SA
5. Discuss impacts affecting Unusual Plant Assemblages (UPA)
6. Vegetation maps should be at scale that is useful for evaluating impacts
7. Impacts due to non-native invasive species
8. Inclusion of an invasive plant management plan
9. Assess Project impacts affecting plant taxa occurring within the Project area that are considered rare within California but more common elsewhere

## 10. Impacts to existing plant communities

### **Wildlife Resources (Priority species, special status species)**

1. Address impacts to both individual and intergeneration movement
2. Impacts to the following species:
  - a. Desert Tortoise
  - b. Burrowing owl
  - c. Desert bighorn sheep
  - d. Mojave fringe-toed lizard
  - e. Mule deer
  - f. American badger
  - g. Northern harrier
  - h. Swainson's hawk
  - i. Loggerhead shrike
  - j. Purple martin
  - k. Migratory birds
  - l. Golden eagles
  - m. Kit Fox
3. Impacts to wildlife movement corridors
4. Preserve large landscape-level migration areas
5. Before passive relocation of burrowing owl is enacted, consider the location of the substitute burrows. If burrows are on site, the owls will move there and will have to be removed again

### **Cultural Resources**

1. Has a 100 percent archaeological inventory been conducted pursuant to Section 106 of the National Historic Preservation Act and BLM Manual 8100?
2. Have archaeological sites been evaluated pursuant to the National Register of Historic Places criteria?
3. Has consultation with Native Americans take place?
4. Evaluate impacts affecting Sacred Sites
5. Describe the process and outcome of government-to-government consultation between BLM and each of the tribal governments within the Project area, issues that were raised (if any), and how those issues were addressed in the selection of the proposed alternative
6. Evaluate potential impacts on archeological, cultural, and historical resources in the vicinity of the Project, including, but not limited to: (1) Native American resources, burial sites, and artifacts; and (2) historical mining operations and related artifacts.
7. Assuming the Project site has cultural resources, it is critical to have a "Treatment Plan" or an Historic Preservation plan
8. Analyze impacts affecting the Palen Mountains, which are very sacred to the Uto-Aztecan
9. Evaluate the sacredness and lack of water

## **Visual Resources**

1. Baseline for visual resources has not been categorized
2. Visual impacts to wilderness areas
3. Avoid impacts affecting visually sensitive areas
4. Analyze the Project's aesthetic and visual impacts that could affect tourism in the area
5. The benefits which the Project will provide may well outweigh the costs of visual impacts

## **Land Use/Special Designations (ACECs, WAs, WSAs, etc.)**

1. Discuss impacts affecting Multi-Species Wildlife Habitat Management Area (WHMA)
2. Evaluation of consistency with land use and regulatory plans, including Executive Order 11644, which allows for use of off-road vehicles on public lands
3. Describe reasonably foreseeable future land uses and associated impacts resulting from additional power supply
4. Consider direct and indirect effects of the inter-connecting transmission line
5. Discuss how the Project would support or conflict with existing land use plans

## **Public Health and Safety**

1. Disclose any potentially toxic or hazardous wastes that may be associated with Project construction, operation, and maintenance including pesticides and herbicides
2. Discuss how toxic wastes will be disposed
3. Identify fire prevention BMPs due to use of high temperature liquids
4. Discuss if bioremediation areas are to be used for soil contaminated by heat transfer fluid
5. Discuss the generation of concentrated, dewatered solid waste associated with evaporation ponds and describe whether this waste product will be transported off site for disposal
6. Discuss the effect the evaporation ponds will have on human safety
7. Address potential direct, indirect and cumulative impacts of hazardous waste from construction and operation of the proposed Project
8. Discuss hazards that could occur in the event of an earthquake or explosion
9. Address the effects that each alternative may have on wildfire risks

## **Noise/Vibration**

1. Consider wildlife as sensitive receptors

### **Recreation (RMAs, facilities, LTVAs, dispersed recreation opportunities, etc.)**

1. Evaluation should include impacts regarding off-highway vehicle use (OHV), camping, photography, hiking, wildlife viewing, and rockhounding
2. Evaluation should include number of users, value of affected land for recreational purposes, and need to locate and acquire replacement venues for lands lost
3. Evaluate indirect impacts caused by displacing recreational users

### **Social and Economic Setting**

1. Evaluation of economic impacts due to construction, implementation, and operation
2. Economic impacts regarding loss of commerce due to recreational use losses

### **Environmental Justice (minority and low-income communities)**

1. Evaluate whether diminished recreational access would be placed disproportionately on minorities and low-income communities
2. Include an evaluation of environmental justice populations within the geographic scope of the Project

### **Cumulative Impacts**

1. Identify impacts from other projects occurring in the vicinity, including solar, wind, geothermal, roads, transit, housing, ORV use, military maneuvers, and other development
2. The cumulative analysis area should encompass the Sonoran/transition desert areas of the California desert at a minimum
3. Some reasonably foreseeable Projects in the vicinity include all the solar and wind applications along I-10
4. Identify cumulative impacts affecting wildlife and vegetation
5. Include discussion of cumulative impacts to ground water supply
6. In the introduction to the Cumulative Impacts Section, identify which resources are analyzed, which ones are not, and why
7. Analyze the potential for development and population growth to occur in those areas that receive the generated electricity
8. describe the reasonably foreseeable future land use and associated impacts that will result from the additional power supply
9. Examine the potential for ecosystem fragmentation associated with the cumulative effects of large-scale industrial development occurring in the California Desert areas
10. Analyze the Project's cumulative impacts affecting biological resources
11. The cumulative impacts analysis should address species migration needs and other ecological processes that maybe caused by global climate change

## B. Alternative Development and/or Alternative Design Criteria

Comments in this category will be considered in the development of alternatives or can be addressed through design criteria in the alternative descriptions.

1. Project description should not be narrowly defined to rule out feasible alternatives
2. Describe how each alternative was developed, how it addresses each Project objective, and how it would be implemented
3. The preferred alternative should consider conjunctive use of disturbed private land in combination with adjacent lower value federal land
4. Consider reduced Project size
5. Alternatives should include: sites not under BLM jurisdiction; Project extent and electrical power generation that differ from proposal; use of different technology; benefits associated with the proposed technology
6. Alternatives should describe rationale used to determine whether impacts of an alternative are significant or not
7. Consider reconfiguration alternatives proposed by CEC in their Dec. 7, 2009 data request—to minimize impacts to wildlife movement and sensitive biological resources
8. Discuss feasibility of using residential and wholesale distributed generation, in conjunction with increased energy efficiency, as an alternative
9. Consider cost of energy for different technologies
10. Consider large-scale rooftop photovoltaic
11. Established power purchase agreements should not affect decisions made on alternatives
12. Consider alternative technologies that require significantly less water
13. Consider the no-action alternative
14. Consider Dry Cooling as an alternative
15. Consider moving the project off of all sand areas

## C. Issues or Concerns Outside the Scope of the EIS

Comments in this category are outside the scope of analysis and will not be addressed in the EIS. Rationale for considering these comments out-of-scope is included.

1. Agencies must require adequate end of project life planning, including reuse of abandoned sites for future renewable energy projects in lieu of allowing development on other undisturbed lands; and/or returning to public use in original condition
2. What mix of distributed PV, wind energy, and transmission dependent “Big Solar” best fits with forecast demand in 2020
3. Consider development wherein solar and wind is focused first on lands which have lower resource value due to fragmentation, type conversion, edge effects, and other factors

4. Include independent analysis of resource values of various renewable energy zones under consideration
5. Consider abandoning the “fast track” approach because it does not allow enough time for an adequate analysis of impacts affecting natural, historical and cultural resource on and around the Project site
6. It is essential that the Department of Conservation immediately update its maps of farmland in desert areas to reflect current conditions and inform this alternative
7. Consider the cost of lawsuits against the Project